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ESTABLISHMENT AND ENFORCEMENT OF REGIONAL REGULATION RELATED TO LAW AND HUMAN RIGHTS

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ABSTRAK

Kekuasaan yang diperoleh pemerintah melalui mekanisme pemilihan yang berbasis kedaulatan rakyat, itu selanjutnya dijabarkan dalam kewenangan dan hukum yang melandasi kewenangan tersebut. Sejauh ini Undang-Undang, Konvensi-Konvensi Internasional yang telah diratifikasi, dan Peraturan Pemerintah, maupun Keputusan Presiden belum sepenuhnya diimplementasikan secara eksplisit dalam pembentukan Peraturan Daerah yang terkait Hukum dan HAM. Dalam penyusunan Peraturan Daerah terkait Hukum dan HAM, para pejabat yang berwenang melibatkan tenaga ahli yang memiliki kompetensi di bidang Hukum dan HAM. Pengaruh faktor kepentingan dalam pembentukan hukum dan HAM sangat besar, seperti faktor ekonomi dan politik. Kondisi ini diduga menjadi penyebab mengapa pelibatan partisipasi masyarakat dalam pembentukan Hukum dan HAM di Jawa Tengah masih bersifat elitis yakni hanya melibatkan tokoh-tokoh masyarakat, sehingga tidak mencerminkan keterwakilan kepentingan masyarakat. Cara mencegah dan mengatasi kondisi tidaklah cukup dengan seruan moral saja, tapi perlu upaya yang dapat mengeliminir penyimpangan pembentukan dan penegakkan hukum dan HAM khususnya di bidang pendidikan, kesehatan, ketenagakerjaan dan lingkungan hidup.

Kata Kunci: HAM; penegakan hukum; Peraturan Daerah

ABSTRACT

The power obtained by the government through the mechanism of election based on popular sovereignty, is further elaborated in the authority and law that underlies that authority. So far the Law, International Conventions that have been ratified, and Government Regulations, as well as Presidential Decrees have not been fully implemented explicitly in the formation of Regional Regulations relating to Law and Human Rights. In the preparation of Regional Regulations relating to Law and Human Rights, the authorized officials involve experts who have competencies in the field of Law and Human Rights. The influence of interests in the formation of law and human rights is very large, such as economic and political factors. This condition is thought to be the reason why the involvement of community participation in the formation of Law and Human Rights in Central Java is still elitist in that it only involves community leaders, so it does not reflect the representation of the interests of the community. The way to prevent and overcome conditions is not enough with moral appeal only, but it requires efforts that can eliminate deviations from the formation and enforcement of law and human rights, especially in the fields of education, health, employment and the environment.

Keywords: human rights; law enforcement; Regional Regulation

BACKGROUND

Law enforcement is one of the strategic issues in governance, both at national and local level. Within the framework of good governance, law enforcement even becomes one of the principles that must be implemented when a government wants to be categorized as a clean and respectable government. The establishment of laws through transparent and participatory legislative process is also a feature of democratic government. Similarly, the human rights discourse (HAM) is the other strategic issue that is the characteristic of a democratic government. The recognition of human rights shows the presence of appreciation for the diversity of human identity so that every citizen has an equal position before law and governance.

The establishment and enforcement of law and human rights have a strategic value as it relates to the legitimacy of the government. The power obtained by the government through the mechanism of people sovereignty-based election is then elaborated in the law and authority underlying the authority. Law plays an important role as the rules that limit the power and direct the use of force so as not arbitrary and violate human rights. It is the establishment and enforcement of law with regard to human rights.

The problems faced by the Government of Central Java in the establishment and enforcement of law and human rights were caused by the differences in the perception of the concept of human rights and law as a result of the differences in the backgrounds of interests and understanding. The perception difference, when not managed properly, will affect on the difficulty of law enforcement and human rights. Meanwhile, legal guarantee is one of the important factors required to create conducive stability for regional development.

In addition, Central Java also faces a number of problems in the establishment of law and human rights in the region, i.e.:

1. Different perceptions on the concept of law and human rights;
2. The tendency of the process of establishing regional regulations which has not been participatory;
3. There are many regulations that have not been in favor of public interest;

4. There are law enforcements that have not been oriented to justice and legal certainty;
5. The law enforcement officers who have not been supported by optimal facilities and management;
6. High cases of human rights violations, including human trafficking; the resolution of disputes regarding the access to natural resources; and other unresolved issues.

The problems need to be addressed immediately so that there is an increased legal certainty in Central Java. The effort is not only the responsibility of the government and law enforcement officials, but it also has to involve the entire community.

Therefore, it is necessary to do the mapping to what extent the knowledge and understanding of community perceptions of law and human rights in Central Java. In addition, it should also explore how the implementation and the establishment of law and human rights that had been conducted in Central Java.

PROBLEM FORMULATION

Based on the problems described above, the study focused on answering the following problem identifications: how is the association between the law making in Central Java and the law making at national level regarding to what is the policy design of law enforcement and human rights that can be implemented in Central Java.

LITERATURE REVIEW

The formation of law is the establishment or preparation of legislation. A product of legislation that is produced through formal/procedural aspects consisting of methods, processes, and legislative techniques until it becomes a positive rule of law in order to have meaning and receive respect and adequate recognition from the affected parties that require foundation and legitimacy from material/substantial aspects. In formulating articles in the regulation, it is necessary to pay attention to 4 language provisions in the formulation of articles and verses, namely:¹

1. It is easy to understand by the parties, both those who carry out the law and those who are subject

¹ Effendi Perangin dan Nandang Alamsah D. (1991). *Ketrampilan Membuat Akta Perjanjian & Dokumen Lainnya*. Jakarta: Pusat Latihan Sarjana Hukum Perusahaan, h. 64-71.

to the law. There are 3 instructions in formulating articles and verses to be easily understood, namely: a. Use words/terms that are easily understood by the parties; b. Use short sentences; c. Directly on the purpose to be conveyed.

2. Specific, in the sense that the terms / words used are special so that they cannot be interpreted in various ways.
3. Complete, meaning it contains the right idea, a unified understanding that has no shortcomings.
4. Consistent, meaning in harmony, the use of fixed terms and the contents of the articles are not contradictory.

The way in which regulators can ensure adequate participation in the regulatory process is that there are two commonly used ways, namely announcements and comments, and submissions to regulators. In a system of announcements and comments, an institution publishes a proposed regulation in a newspaper, and then invites the wider community to provide comments in writing for a certain period of time. After receiving the comments, the agencies reconsider, and if necessary, re-arrange the relevant regulations.²

According to Article 1 point 1 of Law No. 39 of 1999 concerning Human Rights, Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for honor and protection of human dignity.³

In Indonesian if you do not use the term Human Rights is to use the term Basic Rights. If traced this term if it does not refer to the term in English, refers to the Dutch language. In English there are 2 terms: First Human Right, Second Fundamental Right. From these two terms it gives rise to an interpretation that if there is a human right that is not fundamental.

Fundamental (Ar) is the basic basis, the basic character; Human rights: rights for every person (human) that can be sued to be treated for themselves,

for example justice must be carried out for everyone.⁴ Theo Huijbers⁵ states that human rights are called human rights, because they are considered as the foundation upon which all living organizations must be built together. These rights are the principles of law.

The principle itself is the foreign term "beginssel" as long as the word begins means the beginning or start. So the principle is to start or be the beginning of "something". *Beginssel* means: the beginning; the simplest nature/basis; origin; starting point; principle; belief; basic.⁶ Thus basic and fundamental or basic understanding is the same. This was also supported by Miriam Budiardjo's opinion, which in some of his writings mentions: "... fundamental (fundamental) ..." or "... human rights (fundamental human rights or human rights only) ...".⁸

The formulation of the definition of human rights in the MPR Decree with the Law is different. In the Law there are no "universal" and "eternal" words. Though if traced based on the development of the history of legal philosophy. This human right is the greatest work of the school of natural law which assumes that good law is universal and eternal.

Problems in the law enforcement environment are also experienced in the enforcement of human rights. A number of cases of human rights violations do not only involve law enforcers, but also the community. Community groups on behalf of mass organizations often commit vigilante acts, by attacking or destroying other people's property rights. Likewise the free verdict in most corruption cases involving state administrators reflects the lack of protection and fulfillment of human rights that pay attention to the sense of justice in society. Likewise, the high rate of poverty, unemployment, hunger and the like is a problem that has not been resolved in the enforcement of human rights in the social, cultural and economic fields.

⁴ Badudu Zain. (1996). *Kamus Umum Bahasa Indonesia*. Jakarta: Pustaka Sinar Harapan, h. 83.

⁵ Theo Huijbers. (1995). *Filsafat Hukum*. Yogyakarta: Kanisius, h. 102.

⁶ S. Wojowasito. (1985). *Kamus Umum Belanda Indonesia*. Jakarta: Ichtiar Baru-van Hoeve, h. 61.

⁷ Miriam Budiardjo. (1998). *Menggapai Kedaulatan Untuk Rakyat*. Bandung: Mizan, h. 40.

⁸ *ibid.*, h. 50.

² Ann Seidman, Robert Seidman, dan Nalin Abeyeskere. (2001). *Penyusunan Rancangan Undang-Undang Dalam Perubahan Masyarakat Yang Demokratis, Sebuah Panduan Untuk Pembuat Rancangan Undang-Undang*. Jakarta: ELIPS, h. 448.

³ Moh. Mahfud MD. (1993). *Dasar dan Struktur Ketatanegaraan Indonesia*. Yogyakarta: UII Press, h. 141.

There are three main causes of human rights violations, namely unequal distribution of power, powerless citizens, and still strong feudal and paternalistic culture in society. These three factors, in turn, gave rise to practices of abuse of power. Thus, the occurrence of human rights violations is not something that happens by itself but because of the factors mentioned above.⁹

RESULTS AND DISCUSSION

The Association between the Law Making in Central Java and the Law Making at National Level

The key to successfully improve human rights and in order that the legal products made in regions based on human rights, is on how regional governments coordinate and respond to all of the instrument of human rights. Therefore, human rights becomes a value system which is familiar and in line with the needs of society.

The results show that so far Laws, Ratified International Conventions, government regulation, and Presidential Decrees have not been implemented explicitly in the making or regional regulations related to law and human rights in Central Java. It seems that there are still problems of harmonization of the making of regional and national legislation. In other words, there is no association and synchronization either vertically or horizontally on the laws in Central Java, especially in the making of legislation related to Law and Human Rights in the areas of education, health, employment, and environment.

In the preparation of regional regulations related to Law and Human Rights, the competent authorities draw up regional regulations by involving the experts with the competence in the field of Law and Human Rights. The results showed that in every law makings were always preceded by academic papers.

In drafting regional regulations, there are interest factors that affect the legislative institutions. The interest factors include political, economic, social and cultural factors. The process of law and human rights making governing education, health, employment and environment in Central Java involved the

factors. The effects of the interests, according to most respondents, affect the law and human right making processes and their enforcements.

The structural conditions of the institutions making Law and Human Rights in the forms of infrastructure, responsiveness, work ethic, professionalism, integrity, coordination, standard operating procedures, and fragmentation are the important factors that can affect the quality of established regional regulations. The conditions of the facilities for law and human rights enforcement institutions in Central Java are classified as incomplete.

In the making of regional regulations, it is important to consider the materials of the regional regulations that must be in accordance with existing regulations at provincial and national level. The provision should be noted in order that the legal product does not conflict with the higher rules drawn up in advance.

Law is linked very closely with the community, as expressed in the slogan "*Ubi societas ibi ius*" meaning that where there is a community there is law because laws regulate inter-human interaction in society. A good law is a law which is in accordance with living laws in the community and corresponds to or is a reflection of the values prevailing in a society. Regarding the regional regulations related to Law and Human Rights governing Education, Health, Labor and Environment in accordance with the ultimate purpose of Law and Human Rights, the results showed a compatibility between the regulations associated with the law and human rights and the ultimate purpose of law.

Based on the description of the research results above, it shows that so far Law, Ratified International Conventions, government regulations, and Presidential Decrees are explicitly not fully implemented in the establishment of regional regulations related to Law and Human Rights in Central Java. It seems that there are still problems of harmonization in the establishment of laws in regions with those at national level. In other words, there is no connection and synchronization both vertically and horizontally in the law establishment in Central Java, particularly in the establishment of laws and regulations related to Laws and Human Rights in

⁹ Richard Bennet. "Organisasi-organisasi yang Berkaitan dengan Hak Asasi Manusia di Selandia Baru" dalam Candra Gautama dan B.N. Marbun (eds). (2000). *Hak Asasi Manusia, Penyelenggaraan Negara yang Baik dan Masyarakat Warga*. Jakarta: Komisi Nasional Hak Asasi Manusia, h. 75.

the areas of education, health, employment and environment.

In the preparation of regional regulations related to Laws and Human Rights, the authorized authorities had involved the experts with the competence in the field of Laws and Human Rights. The involvement of such experts was intended to formulate an academic paper before the regional regulations were stipulated. However, the involvement of community participation in the establishment of law and human rights in Central Java was still elitist that only involved the public figures who did not reflect the representation of the interests of the society. The results also showed the significant effect of the interest factor on the establishment of laws and human rights. The factors that affect the establishment of laws and human rights are economic and political factors.

The Policy Design on the Form of Laws and Human Rights Enforcements which should be Implemented in Central Java Province

Based on the description of the research results above, the data and information showing the existing problems of harmonization in the establishment of regional laws with those at national level were found, particularly in the establishment of laws related to the laws and human rights in education, health, employment and environment. The results also showed the significant effect of the interest factor on the establishment of laws and human rights. The factors that affect the establishment of laws and human rights are economic and political factors.

This condition was considered to be the cause of why the inclusion of public participation in the establishment of laws and human rights in Central Java was still elitist that only involved public figures, so it did not reflect the representation of the interests of society. The interest factor is also believed to affect human rights and law enforcement as well as weak law and human rights enforcement, particularly in education, health, Labor and Environment in Central Java.

Law enforcement is a law dynamist through a legal ruling. Legislation is living and implemented in accordance with the needs and development of society. Furthermore, poor legislation would still

achieve the goals or objectives when it is in the hands of good law enforcement officials.

In the system of law enforcement, law enforcement does not only occur in a series of judicial proceedings, but it is also carried out by other agencies concerned. Therefore, law enforcement is not just about the “human” (police, prosecutors, and judges) as a system, but it is also related to various subsystems, namely: institutional enforcement; resources/law enforcers; procedure (mechanism) of law enforcement; and the infrastructures and means of law enforcement.

It is necessary to recognize judicial and non-judicial elements, and the diversity of their subsystems, so the improvement of law enforcement efforts can be performed integrally, not only related to judicial institution. The significance of the role of agencies or law enforcement officials become an important part in the overall process of law enforcement.

Similarly, the substance of law must be able to accommodate the interests of society so as to give sense of justice to many people when applied or enforced at empirical level. Therefore, both the legal structure and substance in the process of identification can not be separated. Both good and poor performance of the legal structure and substance will have at least a little impact or effect on public perception and appreciation to the law.

To realize the “legal certainty” in a system of government based on law, at least it must be supported by the following elements, i.e.: (1) the substance of law, (2) the legal apparatus, and (3) the legal culture. The second element (the legal apparatus) uses the term of legal structure which includes judiciary, police, prosecution agencies, prison agency, legal advisors, legal counsel, and the agencies of legal dispute resolution out of court.

There are two major aspects related to the various complaints of justice seekers, namely the quality of the decision and the integrity of law enforcement officers. They often stay away one another in a decision due to the law enforcement officers are not neutral or impartial. It may occur for several reasons:

1. Effect of power. The court is powerless against the will of a higher authority either from the environment (for instance, Supreme Court Judge) or from the external environment (e.g.

- governors, regents, Minister, entrepreneurs and others).
2. The influence of the public. Excessive public pressure may cause fear or anxiety of the court, so it decides in accordance with the “coercion” of the public.
 3. The influence of the parties. The influence of the parties may be sourced from certain primordial relationships, as well as the “case commercialization”. A case becomes a commercial commodity. Those who pay more will be won.

The problems are still found in Central Java, particularly in the establishment and enforcement of law and human rights in Central Java. Based on the results of the study, the data and information shows that there are still problems of harmonization in the establishment of laws in regions with the national level particularly in the formulation of laws and regulations associated with the law and human rights in education, health, employment and environment.

The research results also show the significant effect of the interest factor in the establishment of law and human rights. The interest factors that affect the establishment of law and human rights are economic and political factors. The condition is suspected to be the cause of why the inclusion of public participation in the establishment of law and human rights in Central Java is still elitist that only involves public figures, so it does not reflect the representation of the interests of society. The interest factor is also believed to affect the human rights and law enforcement and a weak law and human right enforcement, particularly in education, health, employee and Environment in Central Java.

How to prevent and treat the deviation condition in the establishment and enforcement of law is not simply a moral appeal, but it needs other efforts to eliminate the irregularities in the establishment and enforcement of law and human rights in Central Java, particularly in education, health, employment and environment. The policy design on Law and Human Rights Enforcement that should be implemented in Central Java province, i.e.:

1. Reducing the influence of power by establishing political, social, cultural system that uphold the law or can be forced to respect the law;

2. Increasing the role of law enforcement agencies or officers to be an important part in overall process of law enforcement;
3. Accommodating public interest so that the substance of the law to provide justice to many people when the laws are applied or enforced on the empirical level;
4. Public policy is designed as an instrument to control society, which in turn is formalized in the form of laws (regional laws) in order that each stakeholder who may in the future violate the agreement may be subject to sanctions, and the consistency of the stakeholders can be kept together;
5. Involving the community in the establishment of law and human rights is not limited to the scope of the elites (public figures, academics, NGOs), but it also involves a broader society;
6. At the level of policy implementation, coordination and integrity of law enforcement agencies and officers are required to uphold their neutrality so that the implementation of the regional regulations on law and human rights in the field can run well.

CONCLUSION

So far Law, International Conventions that have been ratified, and government regulation, as well as Presidential Decree explicitly not fully implemented in the formation of regional regulations related to Justice and Human Rights in Central Java. Regions in the preparation of legislation relating to Justice and Human Rights, the competent authorities have involved experts with competence in the field of Justice and Human Rights. The involvement of such experts is intended to formulate an academic paper before the specified local regulations. However, the involvement of community participation in the establishment of law and human rights in Central Java is still elitist that only involve public figures that do not reflect the representation of the interests of society. The results also show, the effect of the interest factor in the formation of very large law and human rights. Factors that affect the interests of law and human formation that is economic and political factors. The results showed, the effect of the interest factor in the formation of very large law and human rights. Factors that affect the interests

of law and human formation that is economic and political factors. This condition is thought to be the cause of why the inclusion of public participation in the establishment of law and human rights in Central Java is still elitist that only involves public figures, so it does not reflect the representation of the interests of society. The interest factor is also believed to affect the implementation of the law and human rights and weak enforcement of law and human rights, especially in education, health, employment and the environment in Central Java. How to prevent and treat the condition with the condition of a moral appeal is not enough alone, but need another effort to eliminate irregularities and the establishment of rule of law and human rights in Central Java especially be true in the fields of education, health, employment and the environment. The Policy Design on the Form of the Establishment and Enforcement of Law and Human Rights that should be implemented in Central Java Province can be conducted through:

- a. Reducing the effect of power by establishing political, social, and cultural systems that uphold the law or may be forced to respect the law.
- b. Increasing the role of law enforcement agencies or officers to be an important part in the overall process of law enforcement.
- c. Accommodating the public interest so that the substance of laws provides justice to many people when they are applied or enforced at empirical level.
- d. Public policy is designed as an instrument to control society, which in turn is formalized in the form of laws (regional laws) so that each stakeholders who likely violate the agreement later may be subject to sanctions, and the consistency of the stakeholders can be maintained for its integrity
- e. Involving the community in the establishment of law and human rights; not only limited to the scope of the elites (public figures, academics, and NGOs), but it also involve a broader

public. At the level of implementation, a policy requires coordination and integrity of relevant law enforcement agencies by upholding their neutrality so that the implementation of the regional regulations on law and human rights in the field can run smoothly.

REFERENCES

Laws:

The 1945 Constitution.

Law No. 39 of 1999 on Human Rights.

Law No. 12 of 2011 on Establishment of Law.

Books:

Ann Seidman, Robert Seidman, dan Nalin Abeyesekere. (2001). *Penyusunan Rancangan Undang-Undang Dalam Perubahan Masyarakat Yang Demokratis, Sebuah Panduan Untuk Pembuat Rancangan Undang-Undang*. Jakarta: ELIPS.

Badudu Zain. (1996). *Kamus Umum Bahasa Indonesia*. Jakarta: Pustaka Sinar Harapan.

Effendi Perangin dan Nandang Alamsah D. (1991). *Ketrampilan Membuat Akta Perjanjian & Dokumen Lainnya*. Jakarta: Pusat Latihan Sarjana Hukum Perusahaan.

Miriam Budiardjo. (1998). *Menggapai Kedaulatan Untuk Rakyat*. Bandung: Mizan.

Moh. Mahfud MD. (1993). *Dasar dan Struktur Ketatanegaraan Indonesia*. Yogyakarta: UII Press.

Richard Bennet. (2000). "Organisasi-organisasi yang Berkaitan dengan Hak Asasi Manusia di Selandia Baru" dalam Candra Gautama dan B.N. Marbun (eds). *Hak Asasi Manusia, Penyelenggaraan Negara yang Baik dan Masyarakat Warga*. Jakarta: Komisi Nasional Hak Asasi Manusia.

S. Wojowasito. (1985). *Kamus Umum Belanda Indonesia*. Jakarta: Ichtiar baru-van Hoeve.

Theo Huijbers. (1995). *Filsafat Hukum*. Yogyakarta: Kanisius.